

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA, -v.- LEWIS STAHL, Defendant.	1:18-cr-00694-RA
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FIRST AMENDED MOTION FOR RECONSIDERATION OF SENTENCING,
FILED PURSUANT TO RULE 35(a) FED. R. CRIM. P.
ON BEHALF OF LEWIS STAHL

Defendant, Lewis Stahl, by and through the undersigned counsel, files this First Amended Motion For Reconsideration Of Sentencing, Pursuant To Rule 35(a) Fed. R. Crim. P. On Behalf of Lewis Stahl, and states:

On March 26, 2019 this Court orally announced judgment of Defendant, Lewis Stahl. A transcript of those proceedings has been attached hereto and is referenced below. *Exh. 1, Transcript*. Written rendition of judgment and sentence was filed on April 1, 2019 [DE 19] conforming to this Court's oral announcement of sentence. The terms of sentence included, inter alia, Stahl's imprisonment of 30 months to the Bureau Of Prisons. *Id.*

Defendant files the instant motion pursuant to Rule 35(a) requesting reconsideration of sentencing based upon *other clear error* within the jurisdictional parameters of Rule 35(a) Fed. R. Crim. P., *infra*. Defendant hopes that this Court will grant a timely rehearing on sentencing for the limited purposes delineated below, specifically for reconsideration of sentence not above the average prison length of 21 months for the nineteen (19) similarly situated offenders sentenced under 2T1.1 with a base offense level of 24, with a 3 level decrease for acceptance of responsibility, final offense level of 21, and a criminal history category of 1. During fiscal years 2013-2017, in

“U.S. Sentencing Commission, 2013-2017 Datafiles, USSCFY13-USSCFY17”; provided by the Court to counsel during Lewis Stahl’s sentencing for the first time.

The Court stated:

“THE COURT: Look, I, of course, agree with the general premise that every case needs to be considered on its own. I will tell you that I reached out to the Sentencing Commission, and I'm happy to provide the information that I received, and if you want more, it's just a one-page chart, so maybe I'll have that printed right now, and I will give it to each side. But it's essentially selected sentencing information for offenders sentenced under this provision, 2T1.1, with a base offense level – a final offense level of 21, so a base offense level of 24, with a three-level decrease for acceptance of responsibility. The sentence length of all offenders was an average of 21 months, 38 -- why don't I print it for you. So, for all offenders, the average months was 21 months, and then it lists what percentage were in the sentencing guideline range, which warrant – what percentage had substantial assistance motions and the like. So, if you want to take a minute and look at that, you can do so. In any event, I agree with the basic premise that we have to look at every case on its own while considering the guidelines.

MS. KELLMAN: Thank you, Judge.” [Sentencing Transcript, pps. 20-21]

The Sentencing Commission printout was then provided to counsel by the Court, as attached hereto. *Exh. 2, Sentencing Commission printout*. Counsel for Lewis Stahl did not have a meaningful opportunity to discuss this printout, or the sentencing data or statistics cited therein with Lewis Stahl and was further unable to meaningfully examine the document for purposes of making competent argument, or even commenting on, its application to Lewis Stahl’s instant sentencing. Lewis Stahl claims that he was prejudiced by lack of notice, which constitutes other clear error, pursuant to Rule 35(a) Fed. R. Crim. P., based upon the caselaw cited below, for which Lewis Stahl is entitled to reconsideration from this Court.

The Court did consider the Sentencing Guidelines printout for purposes of Lewis Stahl’s sentencing, but stated that the printout was “not that helpful”:

“So, I must, and will, consider all those factors and the others raised, including the need to avoid unwarranted sentencing disparities. I considered both the charts, the arguments that you made. I also considered the page that I got that I gave to you

from the sentencing commission, which really only has a very limited amount of information, so *it's not that helpful*, but it indicates that 21 percent of the time, a sentence was imposed within the guidelines range for this particular level and this particular guideline provision, 2T1.1. So, I have considered that, as well as the average and median sentences in those cases.” [Sentencing Transcript, p. 50] [italics added]

Had counsel conferred with Defendant regarding the printout, they would have been instructed to argue that in light of the Judge’s oral finding regarding the Defendant’s non-criminal and charitable background, a sentence not in excess of the average would be more appropriate than a sentence exceeding the average by 9 months. Defendant seeks an opportunity to make that argument now.

Lewis Stahl moves this Court for rehearing on Monday, April 8, 2019, and an opportunity to argue the data included in the printout that the Court presented to counsel, and for reconsideration of sentence to no more than the average prison sentence of 21 months; as Lewis Stahl was not provided a meaningful opportunity to present argument why this data was helpful and should have been given greater weight at his sentencing. Attached hereto is *Exh. 3, Court Printout Data Analysis*.

Rule 35(a) Fed. R. Crim. P. provides in pertinent part:

“Rule 35. Correcting or Reducing a Sentence

(a) Correcting Clear Error. Within 14 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or *other clear error*.” *Id.*

Lewis Stahl claims that lack of prior notice regarding the sentencing commission document considered by this Court at his sentencing constitutes *other clear error* within the ambit of Rule 35(a) conferring jurisdiction to this Court for reconsideration of sentencing, at least included in the outer boundaries of other clear error, as described below.

The authority to correct a sentence under Rule 35(a) is intended to be very narrow and to extend only to those cases in which an obvious error or mistake has occurred in the sentence, that is, errors which would almost certainly result in a remand of the case to the trial court for further action under Rule 35(a). Fed. R. Crim. P. 35 advisory committee note (1991). *United States v.*

Goddard, 2018 WL 4440503 (SDNY 9/17/18), citing *United States v. Abreu-Cabrera*, 64 F.3d 67, 72 (2d Cir.1995). See also *United States v. DeMartino*, 112 F.3d 75, 79 (2d Cir.1997).

Although there are no reported cases in this Circuit regarding whether the issue presented by Lewis Stahl constitutes *other clear error* within the meaning of Rule 35(a), other U.S. Circuits have been reluctant to demarcate the outer boundaries of ‘other clear error’ within the meaning of Rule 35(a), other than by examining the error claimed on a case by case basis. *United States v. Ross*, 557 F.3d 237, 239 (5th Cir. 2009).

In *United States v. Rosner*, 549 F. 2d 259 (2nd Cir. 1977), defendant’s case was remanded for resentencing because although the trial court’s reliance on the government’s sentencing memorandum was not improper, defense counsel was not given an opportunity to rebut extraneous allegations of other wrongdoings contained in the memorandum. *Id.* Defense counsel was provided the government’s memorandum in court and did not have a meaningful opportunity to prepare or to rebut ancillary allegations made, considered by the trial court. See *Id.* Although *Rosner* was not a Rule 35(a) case per se, it does present a footprint of the type of “errors which would almost certainly result in a remand of the case to the trial court for further action under Rule 35(a)” *Goddard, Abreu-Cabrera, DeMartino*, supra.

In substance, the claim of prejudice in *Rosner*, supra, sounding in lack of prior notice at sentencing, is similar to the claim of prejudice made here by Lewis Stahl, in that Lewis Stahl was not given a meaningful opportunity to present argument regarding the U.S. Sentencing Commission, 2013-2017 Datafiles, USSCFY13-USSCFY17 to make sound argument to this Court why he should not be sentenced above the 21-month average for similarly situated defendants.

This Court has jurisdiction to grant rehearing, and Defendant requests the hearing on Monday, April 8, 2019. On April 10, 2019, this Court will lose jurisdiction to consider these requests made by Lewis Stahl, notwithstanding whether the Motion is timely filed, but unheard, before expiration of the 14th day. The 14-day time limit is a strict jurisdictional time limit. *United States v. Oleksowicz*, 2017 WL 729724 (SDNY 2/24/17); *United States v. Sarvestani*, 297 F.R.D. 228, 229 (SDNY 2014); *United States v. Munoz*, 2014 WL 2566263 (EDNY 6/6/14), see also Rule 35(c) Fed. R. Crim.P.(Sentencing means oral announcement of sentence).

WHEREFORE LEWIS STAHL, by and through the undersigned counsels, respectfully moves this Court for reconsideration of sentencing, limited to argument regarding the one page document titled "US Sentencing Commission, 2013-2017 Datafiles, USSCFY 13-USSCFY17", provided by this Court to counsel and considered by this Court at sentencing, such that Lewis Stahl would be permitted to present argument why he should be sentenced to no more than the 21 month average punishment cited therein; and further, for rehearing to be scheduled on Monday, April 8, 2019, while this Court still retains jurisdiction pursuant to Rule 35(a) Fed. R. Crim. P.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **7th day of April, 2019**, a true and correct copy of the foregoing motion with attachments was furnished by ECF transmission to: AUSA Jennifer A. Beidel, and AUSA Sara E. Paul, United States Attorneys Office-SDNY, One Saint Andrews Plaza, New York, NY 10007.

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**ATTACHMENTS Sentencing Transcript March 26, 2019
U.S. Sentencing Commission, 2013-2017 Datafiles, USSCFY13-17**

EXHIBIT 1

J3QKSTAS

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

18 CR 694 (RA)

5 LEWIS STAHL,

6 Defendant.

7 -----x

8 New York, N.Y.
9 March 26, 2019
3:12 p.m.

10 Before:

11 HON. RONNIE ABRAMS,

12 District Judge

13 APPEARANCES

14
15 GEOFFREY S. BERMAN,
16 United States Attorney for the
17 Southern District of New York
18 SARAH PAUL
19 Assistant United States Attorney

20 SUSAN GAIL KELLMAN
21 Attorney for Defendant

22 -and-

23 SCHIFF HARDIN LLP
24 BY: PATRICIA A. PILEGGI
25 BRITTANY SOKOLOFF

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1 (Case called)

2 MS. PAUL: Good afternoon, your Honor. Sarah Paul,
3 for the government.

4 THE COURT: Good afternoon.

5 Everyone can be seated, by the way. Thank you.

6 MS. KELLMAN: Good afternoon, your Honor. Susan
7 Kellman, for Lewis Stahl. My client is present in court, and I
8 am assisted at counsel table by Patricia Pileggi and Brittany
9 Sokoloff.

10 THE COURT: Good afternoon to all of you.

11 This matter -- you can be seated as well -- is on for
12 sentencing. Mr. Stahl pled guilty in September to tax evasion.

13 In connection with today's proceeding, I have reviewed
14 the final presentence investigation report. I have two
15 letters, submissions, from the defendant, and one attaches a
16 whole host of letters and personal notes, and I want to thank
17 all of you who submitted letters on Mr. Stahl's behalf. And I
18 have the government's sentencing memorandum.

19 Is that everything that I need to have reviewed today?

20 MS. PAUL: I believe so, your Honor.

21 MS. KELLMAN: Yes, your Honor.

22 THE COURT: Okay.

23 Let's begin by discussing the presentence report.

24 Ms. Kellman, have you reviewed the presentence report and
25 discussed it with your client?

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1 MS. KELLMAN: Yes, your Honor, I have.

2 THE COURT: Do you have any objections?

3 MS. KELLMAN: We do not, Judge.

4 THE COURT: Okay.

5 Mr. Stahl, have you had enough time and opportunity to
6 review the presentence report and discuss it with your
7 attorneys?

8 THE DEFENDANT: Yes, I have, your Honor.

9 THE COURT: Thank you.

10 Does the government have any objections to the report?

11 MS. PAUL: One objection, your Honor: On paragraph 15
12 of the report, it notes that Stahl is responsible for a loss to
13 the Internal Revenue Service of 6,300,000 in taxes due and
14 owing. It should say over 6 million.

15 THE COURT: Right. And I know that that number is
16 disputed. So we'll add the word over there.

17 MS. PAUL: Yes.

18 THE COURT: Just while we're on this subject, there is
19 a dispute, and you think the parties will be able to reach that
20 dispute, so with respect to restitution, we don't need to
21 determine that particular figure, whether it's the 6.3 or the
22 8.7 today; is that correct?

23 MS. PAUL: That's right, your Honor.

24 Just by way of background and for the record, the
25 government's position, based on the facts before it now,

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1 continues to be that the tax loss is \$8,739,935. The defense's
2 position is that the tax loss is \$6,349,689. The difference in
3 that figure rests upon whether a certain tax credit is applied
4 for research and development. The parties have just not been
5 able to resolve whether or not that credit applies. The
6 defense did come forward with some information to the
7 government, but we just weren't able to make a determination --

8 THE COURT: It doesn't affect the loss amount either,
9 right?

10 MS. PAUL: It doesn't.

11 THE COURT: It just affects restitution, as I
12 understand it.

13 MS. PAUL: That's right. And the parties have agreed
14 that the Court need not make the finding. We think we can
15 proceed without the Court making that finding, and, rather, the
16 IRS will conduct a civil audit and resolve the dispute that
17 way.

18 THE COURT: Will that be done within the 90-day
19 period?

20 MS. PAUL: I would have to speak with IRS about that.
21 That would be ideal.

22 THE COURT: Okay. So you need to let me know because
23 I've got to issue something within 90 days with respect to
24 restitution.

25 MS. PAUL: We'll certainly let the Court know.

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1 THE COURT: All right. Thank you.

2 MS. KELLMAN: Your Honor, if I can just very briefly
3 be heard on that issue?

4 THE COURT: Yes, of course.

5 MS. KELLMAN: Just to be clear, we have done -- and
6 the government's met us halfway. We've done everything we can
7 to try to resolve the issue. We presented the government
8 with -- in addition to some documents, with two substantial
9 reports that were prepared by a company called The Alliant
10 Group, who specializes in research and development credits. We
11 provided the government with an original report and then an
12 updated report. We've also done something I can't remember
13 doing before, which is offered our client and his entire staff
14 for interviews if the government wanted to interview them.
15 We've also provided them with charts that showed -- I mean,
16 dozens of pages of charts that shows the role that every person
17 played vis-a-vis the credit and why our client is entitled to
18 the credit.

19 So we've done everything we could to try to persuade
20 the government. It is a complex issue, and, ultimately, we all
21 agreed it was best handled in the civil format, but we've made
22 every effort to resolve it in the context of this case so it
23 wouldn't be outstanding.

24 THE COURT: Thank you for those efforts.

25 As I said, I think from my perspective, it only

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1 affects restitution, and I'll expect to get something, even if
2 it's disputed, and if we need to meet again within the 90-day
3 period after the sentencing, we will do so.

4 First of all, I'll just note that I adopt the factual
5 findings in the presentence report. The presentence report
6 will be made a part of the record in this matter and placed
7 under seal. If an appeal is taken, counsel on appeal may have
8 access to the sealed report without further application to the
9 Court.

10 Mr. Stahl, when you pled guilty, we discussed the
11 federal sentencing guidelines. Do you remember that?

12 THE DEFENDANT: Yes.

13 THE COURT: For those of you that are here today that
14 don't know, the sentencing guidelines are in this book right
15 here, they're a set of rules, they're published by the United
16 States Sentencing Commission, and they're designed to guide
17 judges when they impose sentence. At one time, they were
18 mandatory, meaning judges were required to follow the
19 guidelines. They're no longer mandatory, they're no longer
20 binding, but judges must consider the guidelines. So it's
21 important to ensure that we've calculated them properly.

22 As I understand it, the parties agree with the
23 guidelines calculation in the presentence report pursuant to
24 which Mr. Stahl is facing a guidelines range of 37 to 46 months
25 in prison.

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1 Based on the parties' agreement and my independent
2 evaluation of the sentencing guidelines, I accept the
3 guidelines calculation in the presentence report. I find that
4 Mr. Stahl's offense level is 21, his criminal history category
5 is I, and, again, his recommended guideline sentence is 37 to
6 46 months in prison.

7 As I said a moment ago, that range is only advisory.
8 Courts may impose a sentence outside of that range based on one
9 of two legal concepts - a departure or a variance. A departure
10 allows for a sentence outside of the advisory length based on
11 some provision in the guidelines themselves. In the plea
12 agreement, both parties agree that no departure from the
13 guidelines range is warranted. I have, nonetheless, considered
14 whether there is an appropriate basis for departure from the
15 advisory range within the guideline system and while
16 recognizing that I have the authority to depart on a finding of
17 grounds warranting a departure. I do, though, also have the
18 power to impose a nonguideline sentence based on what we call a
19 variance pursuant to sentencing factors set forth in a
20 provision of the law, it's 18, United States Code, Section
21 3553(a).

22 So with that, I'll hear from the parties. Would the
23 government like to be heard?

24 MS. PAUL: Yes, your Honor. Thank you.

25 May I take the podium?

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1 THE COURT: You may. Just speak into the microphone,
2 please.

3 MS. PAUL: Yes.

4 Your Honor, I'd like to start by just responding to
5 some of the arguments made in the second letter by the defense,
6 which the government hasn't had an opportunity to respond to
7 yet.

8 Starting with the chart that the defense attached to
9 their second submission, which I think was in response to our
10 chart, the government's chart, that had listed out what we
11 thought were similarly situated tax cases, where substantial
12 sentences were handed down --

13 THE COURT: Just to step back for a moment, your
14 chart, in your view, represented what? All the similarly
15 situated tax cases?

16 MS. PAUL: Not all of them, but some of them, yes.
17 That was the purpose of our chart. Recognizing, of course,
18 that every sentencing presents a unique set of circumstances,
19 we thought it would be helpful to the Court to see a chart that
20 included sentencings that we thought were similar cases.

21 The defense responded with a chart that they contend
22 contains similar cases, but the government doesn't agree with
23 that. These cases -- and I think there are 19 of them cited by
24 the defense -- are really not similar. They are
25 overwhelmingly -- 16 of them are offshore bank cases, and in

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1 these cases, some of the defendants cooperated with the
2 government, which, obviously, was a factor in sentencing. But
3 there's a larger issue here that I think is important to note
4 for the Court that the government didn't get a chance to brief.
5 The foreign bank account-related prosecutions of the U.S.
6 taxpayers have frequently resulted in below-guideline
7 sentences, and there's a reason for that, which isn't present
8 in this case. The IRS had a program called the Offshore
9 Voluntary Disclosure Program, and that allowed taxpayers to
10 obtain immunity from prosecution for their hidden offshore bank
11 accounts if they came forward and entered the program before
12 the IRS learned about them.

13 So the program was very successful for the IRS from a
14 compliance standpoint, but from a standpoint of sentencing, it
15 created an issue because you had U.S. taxpayers who were
16 prosecuted for their conduct related to offshore bank accounts,
17 but then there were taxpayers who were in the program whose
18 conduct was just as bad, and sometimes worse in some instances,
19 as that of the charged defendants, and those individuals, by
20 virtue of the program and its existence, didn't get jail time.
21 So I've heard, and I've prosecuted, some of the offshore bank
22 cases myself, and I've certainly heard judges express the
23 concern that if they give a guideline sentence in that case, it
24 creates a disparity because there's a large set of immunized
25 people who committed similar conduct.

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1 So that is just a different set of cases that I just
2 don't think it's an appropriate basis for comparison here.
3 This is not a case that involved a foreign bank account. This
4 is a case of domestic tax evasion. You don't have that same
5 issue where you have, as a comparison point, a group of
6 similarly situated people who were immunized for conduct that
7 could be described as just as bad. So just the same concerns
8 don't arise, so I don't think it's really an appropriate point
9 for comparison.

10 I'll note, additionally, in the defense's letter,
11 submitted with that chart, they point to U.S. v. Warner as an
12 example of a case the Court should consider. There, the
13 guidelines range was 46 to 57 months, but the government
14 actually only recommended a year and a day. So that's one
15 distinction there. And then in that case, Warner's defense
16 attorney argued that Warner was similarly situated to Igor
17 Olenicoff. Olenicoff also appears on the chart. And
18 Olenicoff, like Warner, was prosecuted for his offshore bank
19 account, and Olenicoff actually cooperated with the government,
20 and in the Olenicoff case, the government recommended three
21 years' probation. So the defense in the Warner case stood up
22 and said it's essentially not fair to give Mr. Warner a
23 different treatment than Mr. Olenicoff, the conduct was very
24 similar, and, there, the government recommended probation. So,
25 again, I just don't think that that's a fair point as a case

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1 for a comparison.

2 The same with the Dan Horskey case, which is another
3 one that appears on this chart and that the defense cited in
4 their letter. That's one where the defendant cooperated with
5 the government. And even there, he actually still got seven
6 months in jail.

7 So these offshore cases are not -- again, I have to
8 underscore they are not -- in the government's view, a fair
9 point of comparison.

10 Of the three remaining cases on the defense counsel's
11 chart, one of them, Michael Gordon, was a cooperating witness,
12 and then the other two, Lawrence Stephenson and Jason Tammen,
13 these are cases that involved unreported income of about
14 \$400,000 and a little more than \$200,000 respectively. In this
15 case, the case of Mr. Stahl, we're talking about unreported
16 income -- unreported business income of over \$21 million. It's
17 just not comparable, in the government's view, from a conduct
18 perspective.

19 Turning now to the government's arguments made in our
20 sentencing submission: I won't repeat all of them here, but I
21 would like to highlight a few of them for the Court's
22 consideration.

23 We do feel a guideline sentence is appropriate in this
24 case, for several reasons: First, certainly the nature and
25 circumstances of the offense. As we noted in our sentencing

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1 submission, tax fraud is theft from the pockets of every
2 tax-paying citizen of this nation, and as Justice Oliver
3 Wendell Holmes stated, taxes are what we pay for a civilized
4 society. This is a case with a multiyear tax fraud that caused
5 the U.S. Treasury and honest taxpayers millions of dollars in
6 actual losses. It was a deliberate offense, and it was
7 long-running in nature. This was not a one-time mistake.
8 There was a five-year period of time where the defendant was
9 deliberately avoiding filing tax returns, so he could keep tens
10 of millions of dollars in business income hidden from the IRS.
11 He purposely didn't maintain bank accounts in his name because
12 he thought the IRS would try to seize the accounts. And then
13 he was given a chance, in 2015, to try to fix the problem. He
14 was approached by an IRS revenue agent, and then in response,
15 Mr. Stahl retained an accountant, and he caused the accountant
16 to submit false delinquent tax returns.

17 Those tax returns didn't report any of the more than
18 21 million he had received in business income. Instead, they
19 falsely claimed his total income was that of a W-2 employee,
20 which only amounted to a few hundred thousand dollars, and it
21 was only after the defendant was approached by criminal
22 investigation agents from the Internal Revenue Service, about a
23 year or so later, that he finally acknowledged his scheme for
24 counsel. This is prolonged and serious conduct, and, in the
25 government's view, it does warrant a guideline sentence.

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1 Turning to the history and characteristics of the
2 defendant: The defendant in this case, he enjoyed certain
3 advantages in his life. He had financial stability. He's a
4 successful owner of a medical technology company. He didn't
5 need to commit this crime. This was a crime driven not by
6 necessity, but by greed. He had a lot of opportunity in his
7 life. Clearly, the courtroom is filled with supporters. He
8 has a network of people who love and support him, and, still,
9 he chose to do this. Still he chose to steal, and he chose to
10 defraud.

11 We recognize -- we believe the Court should absolutely
12 take into account the letters submitted on his behalf and the
13 fact that he's supported by his family and community, but it
14 doesn't distinguish him from other high-achieving and
15 successful white collar defendants who still, despite their
16 advantages, choose to break the law and to hide that side of
17 himself from the people who love and support them.

18 Turning to the need to afford adequate deterrence --

19 THE COURT: Can I just stop you there?

20 MS. PAUL: Yes.

21 THE COURT: Do you know, in any of the cases that you
22 cited -- I know you said that his situation is not
23 distinguishable from that of other white collar defendants, but
24 looking at those tax cases, did those defendants, had they done
25 as much charitable work and good for their community? I know

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1 every case is different, and it's hard to generalize, but can
2 you speak to that generally? He does seem like he's done a lot
3 of good in his life and helped a lot of people, and looking at
4 those particular cases on your chart, and having reviewed those
5 transcripts, how would you compare them to this situation?

6 MS. PAUL: I'll take as an example the Mary Boone
7 case. I believe we attached the transcript of that sentencing.

8 THE COURT: Yes.

9 MS. PAUL: I note in that case -- and that was a very
10 recent case, a recent sentencing in this district, and I know
11 part of the defense's argument in that case was that Ms. Boone
12 had done many good works in her life. I'm not in a position to
13 cite specifically what they were and how they are similar.

14 THE COURT: I understand. And I read the transcript
15 that you provided.

16 MS. PAUL: Yes.

17 But I think that's a good example of a case where that
18 was an argument advanced by defense counsel, appropriately
19 considered by the court, but also appropriately weighed against
20 the conduct. And Ms. Boone's conduct was very serious. The
21 court recognized that it was very serious, and the court also
22 applied the considerations that I think apply equally here,
23 about it being a criminal tax case and the need, the critical
24 need, for general deterrence in such a case.

25 So I think that case is a good point of comparison

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1 because it was recent, and similar arguments were made, and the
2 conduct was similarly serious. In fact, I'd argue, in some
3 ways, this conduct is more serious because of the total amount
4 of the loss, which we at least agree is over 6.3 million. In
5 the Boone case, it was over 3 million.

6 On the point of deterrence, your Honor: As we noted
7 in our sentencing submission, a recent IRS study of tax
8 compliance estimates that only 83.1 percent of individuals are
9 compliant with their tax obligations, causing a yearly tax gap
10 of over \$458 billion in unreported and uncollected taxes. That
11 means that hundreds of billions of dollars are lost every year
12 because people are shirking their responsibilities as
13 taxpayers. It's very important that meaningful sentences be
14 given in cases like this so as to warn others of the
15 consequences of engaging in such conduct. And in criminal tax
16 cases, your Honor, it's particularly important because criminal
17 tax prosecutions are still relatively rare, but they are
18 vitally important. They protect the public interest by
19 preserving the integrity of the nation's tax system.

20 The defendant here has asked for a sentence of
21 probation, which the government submits would fail entirely to
22 serve the goal of general deterrence. It would, in our view,
23 send a message to the community that tax fraud is just no big
24 deal, it's not worthy of serious punishment at all, all one has
25 to do is pay one's back taxes, and nothing else will happen,

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1 and that's just not the message the government believes should
2 be sent here.

3 As Judge Hellerstein has noted, the obligation to pay
4 taxes, it's basic to our civilization. It makes it possible to
5 have a lawful society. If people don't pay their taxes, they
6 cheat each other. Your not paying taxes cheats me. If I don't
7 pay my taxes, I cheat you. You're ripping off everybody else
8 by not paying your share of taxes, and you can't just make it
9 good by paying the back tax. We think that's a very important
10 consideration here.

11 And then the last point I'll make on the reasons we're
12 advocating for a guideline sentence is the need to avoid
13 unwarranted disparities. And I do feel that a sentence of
14 probation in this case, with the guidelines range being 37 to
15 46 months, would result in an unwarranted sentencing disparity.
16 And we point, again, to our chart of recent tax cases as a
17 relevant point of comparison, and as we noted in our
18 submission, it's not uncommon for defendants who are less
19 culpable than Mr. Stahl to receive and serve lengthy sentences
20 of incarceration.

21 Now just turning briefly to some of the arguments made
22 by the defense: They argued that the defendant's family
23 responsibilities are such, that he cannot be incarcerated. As
24 we noted, it seems that there are other family members who can
25 fulfill those responsibilities, particularly with respect to

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1 Bernie Stahl, as needed while Mr. Stahl's serves the sentence
2 for his crimes. I've not heard from defense as to why Jeffrey
3 Stahl, Mr. Stahl's twin brother, who actually lives in the same
4 town as Bernie Stahl, couldn't be available to assist as
5 needed. So we think the family responsibilities of the
6 defendant really shouldn't be a bar to a sentence of
7 incarceration here.

8 The defense has also argued that the defendant needs
9 to -- cannot be incarcerated because he needs to continue
10 running his company. The government just hasn't seen any
11 evidence that the company would shut down if Mr. Stahl were to
12 be incarcerated. We're not saying it wouldn't have some
13 effect, certainly, but the idea that it would shut down just
14 does not seem to be supported, especially when there are many
15 other people involved in the company, including his own family
16 members, who seem like they could continue running the business
17 in his place.

18 Finally, on the point of acceptance of responsibility:
19 The defense has argued that he has paid his back taxes, he's
20 accepted responsibility, but, again, that does not make a
21 sentence of probation appropriate. In our view, he should not
22 get a get-out-of-jail-free card because he's in a position
23 where he can pay his back taxes, where he can make restitution
24 payments prior to sentencing.

25 So, unless the Court has any other questions, I'll

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1 just reiterate that we do feel a sentence within the guidelines
2 range of 37 to 46 months in prison is warranted and that a
3 sentence involving minimal or no jail time would send entirely
4 the wrong message to the defendant and to the public.

5 THE COURT: Thank you.

6 MS. PAUL: Thank you, your Honor.

7 THE COURT: Ms. Kellman?

8 MS. KELLMAN: Thank you, Judge.

9 I know this is going to sound like a strange thing to
10 start with since we submitted a chart, and the government
11 submitted a chart, but I would submit, your Honor, these charts
12 are of very limited use. I say that because, as the government
13 points out, and as all we know, every case stands on its own.
14 And with every case the government cites in its chart as being
15 exemplary or somehow comparable to the case before your Honor
16 at the moment, I would just very briefly point out, for
17 example, in the case of Morris Zimmerman, there was
18 \$120 million tax situation there, there were three IRS audits,
19 and the tax loss was over \$45 million. And I would submit to
20 your Honor that that's hardly a comparable case.

21 More to the point -- and this is not on their chart,
22 I'm not sure why, but within their own brief, the government
23 cites the Trupin case and says that that's a perfect example
24 for the Court as to why this defendant should face jail,
25 because Trupin faced jail, and it was a very similar situation.

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1 Well, it really wasn't even close to a very similar situation.
2 First of all, Mr. Trupin went to trial, and he maintained his
3 innocence during the period of a three-month trial. That's
4 certainly not the case here. Mr. Stahl agreed to enter a
5 guilty plea before he even met a U.S. Attorney, before there
6 was any offer on the table. He let it be known right upfront
7 that he was going to take responsibility as soon as the special
8 agent contacted him.

9 More to the point, Mr. Trupin, also even at
10 sentencing, said that he hadn't done anything wrong, did not
11 accept responsibility. And, additionally, unlike Mr. Stahl, he
12 had a prior conviction for a theft of a Marc Chagall painting.
13 So to suggest they are similarly situated is not even close
14 and, again, brings us back to the point, which is every case
15 really does need to be judged on its own.

16 THE COURT: Look, I, of course, agree with the general
17 premise that every case needs to be considered on its own. I
18 will tell you that I reached out to the Sentencing Commission,
19 and I'm happy to provide the information that I received, and
20 if you want more, it's just a one-page chart, so maybe I'll
21 have that printed right now, and I will give it to each side.
22 But it's essentially selected sentencing information for
23 offenders sentenced under this provision, 2T1.1, with a base
24 offense level -- a final offense level of 21, so a base offense
25 level of 24, with a three-level decrease for acceptance of

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1 responsibility.

2 The sentence length of all offenders was an average of
3 21 months, 38 -- why don't I print it for you. So for all
4 offenders, the average months was 21 months, and then it lists
5 what percentage were in the sentencing guideline range, which
6 warrant -- what percentage had substantial assistance motions
7 and the like. So if you want to take a minute and look at
8 that, you can do so.

9 In any event, I agree with the basic premise that we
10 have to look at every case on its own while considering the
11 guidelines.

12 MS. KELLMAN: Thank you, Judge.

13 I just wanted to also comment, since the government
14 pointed to the Boone case, which is a relatively recent case in
15 this district, that unlike Mr. Stahl, Mary Boone had one adult
16 son who didn't depend on her, he was independent and an adult.
17 She was the owner of an art gallery, didn't have the same kind
18 of work history, didn't have the number of employees that our
19 client has, didn't have --

20 THE COURT: But he does have a lot of other employees.
21 He has other people, including those in his family, who can
22 handle the business. He has other family members that can help
23 with his brother.

24 MS. KELLMAN: Yes and no, Judge. I'd like to be heard
25 about those things.

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1 THE COURT: Of course.

2 MS. KELLMAN: First, with respect to the business
3 itself, while he does have family members involved, and even
4 people from his extended family, as I'm sure your Honor read,
5 involved, there's nobody who does the job that Lewis Stahl
6 does. By that, I mean, even his son Evan, who basically runs
7 the day-to-day business of the company, and Vaughn, an
8 employee, who supervises the network engineers, none of those
9 people do what it is that Lewis Stahl does; that is, stay ahead
10 of the market. He is the person who understands the market, he
11 is the person who understands the direction the market is
12 going, and he's the one who understands what's necessary in the
13 market.

14 And to give your Honor just one concrete example of
15 how that played itself out, and I think it's important, a few
16 years ago, the different states started to impose electronic
17 prescription requirements, and different states imposed
18 different kinds of regulations. Then the federal government
19 came onboard, and they started to impose the same kind of
20 electronic filing of prescriptions. It was Lewis who was ahead
21 of that, following all regulations, who figured out that there
22 was a need for a program and a system that would coordinate all
23 of these, so that the states and the federal government would
24 be on the same page, so that everybody could be in compliance.
25 Now, that was way ahead of the curve, and he was able to get in

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1 there and get the software done. He was advising the different
2 governments as to how it was this could best work. There's
3 nobody in this business who does that.

4 On top of it, Judge, what I have learned, and I had no
5 idea about, is that none of the products that he develops --
6 and over the years, he's developed so many, and they're listed
7 in various forms throughout our memo, but none of those systems
8 or concepts can be patented. The reason for that -- and I had
9 no idea about this -- is that there's an agreement they can't
10 be patented because anybody else can produce a similar kind of
11 software that accomplishes the same thing, and, therefore, the
12 patent office has never issued patents for these kinds of
13 products, which makes their shelf life incredibly short because
14 within a very short period of time, whatever he's come up with,
15 his competitors come up with, and then it starts to move to the
16 next innovation and the next innovation.

17 THE COURT: He knew all of this while he was
18 committing the crimes, right? For the number of years in which
19 he wasn't paying taxes, he knew what the consequences could be
20 if he was caught.

21 MS. KELLMAN: Your Honor, there's no question about
22 that. And we wouldn't be here if that wasn't the issue. At
23 the same time, he has really devoted so much of his life to
24 giving of himself and asking for nothing in return. And he
25 doesn't give the way some people give with money. You know,

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1 the government says he's been fortunate enough to be blessed
2 with money. He's blessed with money because he works 22 hours
3 a day. I mean, I work 22 hours a day, I can't keep up with
4 him. He is committed to his job, but he's committed to his job
5 because it helps people. And it helps the people who are in
6 this room. There are so many people in this room who we found
7 in the most bizarre and unusual circumstances. There's one
8 young man named Vaughn, who I've written about in the
9 sentencing commission. Vaughn was 15 years old 30-some-odd
10 years ago when Lewis was working on a rehabilitation program in
11 Harlem, and he started talking to this 15-year-old kid about
12 what he had in mind for his future and what he planned to do.
13 And the kid was hoping that one day he would be able to be a
14 carpenter, and Lewis said: You seem like a bright kid, why are
15 you going to limit yourself to carpentry? And he took an
16 interest in this fellow, and this young man now works in Boca,
17 works in his company, and is not just -- he sent him to school
18 to learn networking, to learn computers, to learn programming,
19 and now he's supervises the network programs in the operation.

20 And there are so many Vaughns -- would you stand up?

21 THE COURT: Thank you for being here today.

22 MR. DALEY: Thank you, Judge.

23 MS. KELLMAN: I'm told it's his birthday.

24 THE COURT: Happy birthday.

25 MS. KELLMAN: My point, Judge, is that there are so

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1 many different people from so many different walks of life, and
2 the one thing they all say is the one thing Lewis has never
3 asked for is a thank you or anything in return except love and
4 friendship, which is what this room is filled with.

5 Mary Boone didn't have this kind of network relying on
6 her. And I point this out, Judge, because these people will be
7 negatively affected. And you're right, he should have thought
8 about that at the time he was not filing his tax returns, but
9 he didn't, and that's why we're here. But when you balance out
10 the good works that he's done, not to get away with it, not to
11 have some judge eventually figure out that he's a good guy, but
12 he did it because it's who he is.

13 You know, one of the things we talk about in our memo,
14 Judge, is this turkey giveaway, and one of the reasons it stood
15 out to me was because I was there this Thanksgiving for that
16 giveaway. It's the Saturday before Thanksgiving. And I don't
17 know if your Honor saw the pictures, I'm sure you can, but
18 those turkeys, I will tell you, were not just heavy, they were
19 ice cold, and for six hours, we just kept picking up turkeys
20 and handing them to people whose faces lit up when they got
21 their turkey. And it wasn't just turkey, you can see how many
22 people were involved, but there were sweet potatoes, and pies,
23 and all the things that help -- all the items that help
24 somebody, a family, have a happy holiday, and he was able to
25 bring that into everybody's home by giving of himself. And, by

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1 the way, while we were photographing the event at that scene,
2 it was happening in five other places in Broward County.

3 So this is a man who really has gone out of his way in
4 so many, many ways, and to show that to the Court: One, we've
5 obviously written about it, but all these people, and I can go
6 through them if you'd like --

7 THE COURT: I've read the submissions very carefully.
8 I'm happy to hear you out on anything, and it's important that
9 I consider who he is as a person, but stealing \$21 million from
10 the American people is also something I have to consider. I
11 also have to consider the need to deter others from committing
12 similar crimes and to promote respect for the law. What kind
13 of message would I be sending if I let Mr. Stahl go home today
14 on probation?

15 MS. KELLMAN: Well, let's talk about two different
16 things, Judge. First, specific deterrence, I can virtually
17 guarantee your Honor this will never happen again. He is just
18 overwhelmed by the pain that he's caused not to himself, but
19 the pain that he's caused other people, the people that he
20 loves and the people who will suffer.

21 Now, the government points out that anybody could take
22 care of Bernie, and that's not the case. And my client's twin,
23 Jeffrey, is also here today.

24 Jeffrey?

25 His obviously my client's twin brother, but in

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1 Jeffrey's letters, and even in Sharon's, his sister, you can
2 see that it was Lewis who's gone out of his way their entire
3 life to include Bernie in their world. When Bernie couldn't go
4 to the Jewish school that they were going to, because in those
5 days, those schools didn't really recognize handicaps, he went
6 to a private -- a public school, and he was bullied there, and
7 he was treated poorly there. And it was Lewis who said: I'm
8 sorry to everybody, but we have to accept Bernie, and we have
9 to make Bernie a part of us. And when Jeffrey said: Well, he
10 doesn't speak our language, you know, he doesn't understand, it
11 was Lewis who said -- this was when they were kids -- we have
12 to learn his language, so he can learn to communicate with us.
13 It's been Lewis who calls him three, four, five times a day to
14 make sure that he's fine. His dream, Bernie's dream, was to be
15 able to live independently. It was Lewis who made that dream
16 come true. It was Lewis who let him come to work every day in
17 the business, by the way, Judge, that hasn't needed to be there
18 for the last five years. All he does is scan documents there.
19 But he's given this man humanity. He's given him a place to go
20 every day. Everybody treats him with respect there. He's the
21 boss' brother, and he's scanning documents and shredding
22 documents. But this is an expense that my client has taken on.

23 I hear your Honor's point about 22 -- \$21 million, of
24 course I do, but unlike so many defendants, our client is now
25 current on his taxes, and he's paid the money that he owed.

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1 And that's not an excuse, but it is something that the Court
2 should consider, and I have considered it. Look, I don't think
3 everyone has the resources to pay that money back, and he does.
4 I also think, as a practical matter, it's easier for a person
5 to be generous when they have funds. But that being said, I
6 don't doubt for a minute anything that you've said about all
7 the good that Mr. Stahl has done in his life and all the people
8 that he's helped. I see them here, I read the letters, and
9 that's something that's important for me to consider and factor
10 into the sentence, and I am going to. But I also have to think
11 about the nature of the crime, and the need to deter others,
12 and the need to promote respect for the law, and the need to
13 provide just punishment. And, again, I'm asking, what kind of
14 message would I send to kids who have no privileges whatsoever
15 in life who get sent to jail for drug crimes and other crimes
16 every day in this courthouse who don't have those resources,
17 who commit crimes -- and it's not an excuse, but who commit
18 crimes out of need and not out of greed? What kind of message
19 would I be sending?

20 Well, I think part of the message, Judge, is who this
21 man is, because he wasn't born with the wealth. When he and
22 his brother were in college, and his father lost his job, it
23 was Lewis who left college because he thought his brother was
24 smarter, and he bought an ice cream truck, and he sold ice
25 cream, and he got a second job because tuition was expensive.

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1 He got a second job working as a supervisor, an assistant
2 supervisor, in a plant all night while he sold ice cream all
3 day. And why? To better himself? No. So his brother could
4 finish college, and then his brother could finish medical
5 school, and his brother is a certified cardiologist today
6 because Lewis didn't have money, didn't just write a check for
7 it, he worked 24/7 to make sure his brother would be able to
8 finish his education. When he went back to school, he realized
9 it was something he couldn't afford unless he was working, and
10 he left school. And most of the computer skills that he uses
11 today are skills that he's taught himself over the course of
12 time.

13 So he wasn't born into this money. He's earned it.
14 He's worked hard every day of his life to earn it.

15 Now, in terms of the message that you send, Judge, of
16 course, it's important, but you have an individual here who,
17 yes, he's given money, and you can say, well, he had money
18 because he wasn't paying taxes, but the people sitting in this
19 courtroom, Judge, he has given to every one of them in such a
20 personal way, in a way that has changed their lives. Not just
21 Vaughn. Take someone like Sheldon, who's married to Kessianne.
22 Kessianne was their babysitter years ago, and he took an
23 interest in Kessianne and her family, and learned at some point
24 that Vaughn, her husband, was -- I'm sorry, Sheldon -- Sheldon,
25 her husband, was a manager at Bed Bath & Beyond, and they were

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1 downsizing their stores because of Internet activity, and so as
2 a manager, who was earning just under \$60,000 a year, Lewis got
3 involved in -- not with his money, but he said why don't you
4 learn a new skill, why don't you go in another direction, and
5 he encouraged him to take a Microsoft course. Which, yes, he
6 paid for the class, but since then, Sheldon has continued with
7 his studies, and has become a programmer and a networker, and
8 he's a major contributor in their company, and they depend on
9 him, he depends on them. But he's now not making \$57,000 a
10 year, he's making \$120,000, and he's able to take care of his
11 family without looking to the government, without looking for
12 help. That's something that Lewis made possible not by buying
13 it with money that he wasn't paying taxes on, but by taking an
14 interest in someone and believing in them. And that's what
15 he's done to everyone in this room and said to them, you know,
16 if you want to do better, I can help you.

17 When people in his life were faced with illness, he
18 was there for them. His sister now, I believe, has five stents
19 or seven stents in her heart. She's had five life-threatening
20 heart attacks in the last five years. It was Lewis who sat by
21 her bed. Jeffrey was busy. Lewis sat by her bed. And there
22 are people who have crossed his path over the years with
23 drug-related problems. He's found programs for them, he's
24 gotten them into programs, he's supported them in these
25 programs, and he's met them at the other side when they've come

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1 out. How many people can say that they've done those kinds of
2 things?

3 Judge, you know the kinds of cases that I've had over
4 the years, and it's very rare that I can stand next to a client
5 and say I wish I could be more like him. It's very rare that I
6 think as I'm reading these letters, and I think to myself, gee,
7 when I was picking up the turkeys and handing them to the next
8 person in line, and my eyes met with Evan, and Evan just burst
9 into a smile, and I said: What's on your mind?

10 And he said: Isn't this great? Look how happy these
11 people are. This is what my dad taught us. He taught us to
12 share. He taught us to do justice.

13 And I wonder if my kids will say that. I hope they'll
14 say that. They'll certainly not say it in the same way that
15 Evan said it that day. When he looked at me, my whole body
16 shook because I understood that to his core, he believed that
17 doing right and doing good was what he was put on earth for.

18 And he's a young man -- you've read the papers -- he's
19 not without his own struggles, but his father stood by him.
20 And when friends of his father and employees of his father had
21 similar situations, he stood by them. Standing by you doesn't
22 cost a penny. It doesn't cheat the taxpayer a penny. And so
23 when the taxpayer says, well, this guy didn't go to jail, why
24 do I have to go to jail, the answer is because this guy is
25 something special, this guy has gone beyond where other people

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1 go, and it's at his own cost and his own price, it has taken
2 its own toll on him, and what does he ask in return ever?
3 Nothing. He asks nothing.

4 And, your Honor, just with respect to the tax problem
5 alone: It was three years ago, I believe, that he was
6 contacted originally by the special agent, and he cooperated
7 immediately with the criminal investigation.

8 THE COURT: But he didn't cooperate. Maybe,
9 technically, you're accurate about the criminal investigation,
10 but part of what's so troubling here is he just didn't not pay
11 taxes on \$21 million for years, but then when he was
12 confronted, instead of fessing up and paying the money that he
13 owed, he lied to his accountant, and he filed false returns.
14 The notion that this was some temporary lapse is absurd.

15 MS. KELLMAN: That's why we're here, Judge.

16 THE COURT: No, I understand. I'm just saying, yes,
17 once it was clear he was absolutely caught, and he had no
18 defense whatsoever, and he couldn't lie his way out of it, he
19 was cooperative, okay, I grant you that, but it took us a while
20 to get there.

21 MS. KELLMAN: But we got there, Judge, and we got
22 there before the U.S. Attorney's Office was involved. My
23 client turned over -- through his then counsel, turned over all
24 of his financial records, turned over his complete QuickBooks,
25 he turned over everything that was asked for. Ms. Pileggi and

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1 I met with the criminal investigator on a number of occasions,
2 asked how we could help, what more we could give, and the only
3 instruction from our client was whatever it is they ask for, to
4 be cooperative. When I say cooperate, I'm using it in that
5 sense --

6 THE COURT: Yes, I understand.

7 MS. KELLMAN: -- just to be clear.

8 And then, when you balance some of these cases, one
9 that sticks in my mind always is the important factor of the
10 Trupin case, but also the Ty Warner case. It's interesting
11 that the government's position is that people hide money
12 overseas get amnesty. What do you say to the taxpayers then?
13 If you're rich enough to figure out how to get your money into
14 a secret bank overseas, then we'll give you amnesty, so rich
15 people get amnesty. He didn't hide his money, so he is going
16 to face prison term. I mean, that's the government's
17 reasoning, and that makes no sense at all.

18 I mean, in my view, he has money that's helping the
19 community, it's working in the community. And, yes, it should
20 have also been working through the tax department, but to say
21 that rich people who figure out how to hide \$93 million --
22 that's an awful lot of money to have offshore -- did not
23 cooperate with the United States Government -- in fact, in the
24 Ty Warner case, the Seventh Circuit had to sustain a subpoena
25 and direct -- after appeals, direct Warner to turn over the

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1 documents, and he faced no jail time because, after all, he's
2 got \$93 million, but it was hidden overseas, so we'll give him
3 amnesty for that. That makes no sense. I'm sure he did good
4 deeds, also, but I think in all the years that I've stood in
5 this space, I have never -- take all my clients put together,
6 you don't have somebody like Lewis Stahl, somebody who I say,
7 you know, to myself will my kids turn out the same way because
8 of the message he sent to his kids?

9 Ms. Pileggi and Ms. Sokoloff had the opportunity to
10 spend a week in Florida talking to his friends, and neighbors,
11 and the people whose lives he's impacted, and it was -- I read
12 a book recently in which the author said that he never really
13 understood what it meant to listen to somebody actually until
14 he had a meeting with Barack Obama, and at that meeting, he
15 said: When he was finished speaking, the President listened,
16 processed what he was saying, and asked a question about what
17 was being said. And that made this person think, wow, I
18 thought listening was: I say something, you say something; I
19 say something, you say something. Definitely male. But at the
20 end of the day, he got the sense that the person was listening,
21 and it meant so much to him. And that's who Lewis Stahl is.

22 There's a fellow by the name here, Joey -- I'm going
23 to wreck your name.

24 MR. DESORMEAUX: Desormeaux.

25 MS. KELLMAN: -- Desormeaux. Mr. Desormeaux is a

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1 Native American, and he has a tattoo on his hand that one day
2 my client saw on the street and asked him about it. And he
3 explained that he was a member of the --

4 Dakota tribe?

5 MR. DESORMEAUX: Standing Rock Sioux Tribe.

6 MS. KELLMAN: -- Standing Rock Sioux Tribe, and that
7 he's actually a great, great grandchild of Sitting Bull. They
8 talked about it and exchanged ideas about it, and he explained
9 what he does, and my client explained what he does, and they've
10 been like brothers ever since.

11 He supported him emotionally, he supported him
12 financially when he needed financial help. The man runs a big
13 business and a successful business, but when he needed help, he
14 always knew that his brother -- he described them as both being
15 tribal people, one from an American Indian tribe and one from
16 the tribe of Israel -- and they see each other as brothers.
17 That's mind-boggling to me, that there's no ethnic divide,
18 there's no racial divide, there's no religious divide. It's a
19 beautiful thing to see. And, yes, he didn't pay his taxes, and
20 he lied about them. That's why we're here.

21 So, on balance, where does the Court come out? Is the
22 message to the populous -- to the poor kid who gets arrested
23 for selling drugs, is the message to him, as long as you hide
24 your money overseas, we're going to forgive you? Or is the
25 message, if you live a good life, and you try your hardest and

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1 do your best, and you help not because you're going to get
2 something in return -- because every single person describes
3 Lewis Stahl as selfless, generous, compassionate, supportive,
4 every person -- we didn't write those letter them, they wrote
5 them -- and every person felt the same way about him.

6 I haven't slept, I think, since Saturday because I
7 wanted to be sure that I'd be able to communicate to you how,
8 on balance, I think that a jail sentence in a case like this is
9 just wrong. And one of the things that we would propose to
10 your Honor is a possible community service sentence.

11 And Mr. Stahl has been working with a couple, the
12 Nunez family, and they have adopted a school system in Florida,
13 the Dillard High School and Elementary School. It's a
14 population -- it's mostly American population, their reading
15 proficiency is 29 percent, and Lewis has proposed a plan to
16 adopt this school, as he did decades ago with Park East
17 Synagogue, where they needed it a lot less, but Park East,
18 where the rabbi said, do you think you can get us a computer,
19 so we can show the kids in the school what computers do, and
20 Lewis and his son came in, and they installed ten computers,
21 and then they programmed them, and then they taught people how
22 to use them, and then they taught the staff, and then they
23 taught the kids how to use them.

24 What Lewis has proposed to the Nunez family for the
25 Dillard School, and they're excited and thrilled about it, is

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1 to be able to do a similar thing at the school and to be able
2 to train the faculty -- install the computers, train the
3 faculty, and teach the kids how to use computers.

4 My son is a computer geek, and he's out in California,
5 and he tells me that he has several times proposed to the
6 correctional system out there that if inmates were taught how
7 to code and programming languages, that when they got out,
8 they'd never have trouble finding a job because coding is such
9 a valuable skill these days, and, yet, it doesn't ever get off
10 the ground, and here are kids who are struggling in elementary
11 school and high school, and there's a real potential for them.

12 Your Honor, we've taken the liberty, and I really
13 don't mean to be presumptuous, but to prepare a letter for your
14 Honor, if you want to look at it, just with respect to the
15 proposal and the discussions that we've had. And, yes, what do
16 you tell the other people who may end up in jail about why this
17 defendant wouldn't end up in jail? You say because this
18 defendant made an impact in a positive way on so many people's
19 lives. And one of the ways is by adopting a school like this
20 and committing himself. I said to him: Could you do 20 hours
21 a week? That's a thousand hours a year.

22 He said: I could do that standing on my head. That's
23 what I do.

24 And everyone in this room is here to say to you,
25 Judge, that's what he does.

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1 There's a police officer who wrote a letter here,
2 Kevin Albanese, and he writes to your Honor, and he says he was
3 a law enforcement officer for 20 years -- he's retired now --
4 his wife had some addiction problems, left him, he got custody
5 of their two-year-old son, and he didn't have a faintest idea
6 what to do. And he worked, and he couldn't take the kid to
7 work with him as a police officer in Connecticut, and Lewis
8 helped him get daycare and paid for the daycare, but once the
9 kid was in school, he helped him with just parenting, it didn't
10 cost a penny. But Mr. Albanese considers Lewis his brother.
11 He's somebody who stood by him all these years. He's retired
12 now, and he credits so much of his success as a single parent
13 to Lewis guiding him along the way. How many people do we know
14 who do that, not once and not twice, but as a daily diet?

15 Rabbi Brikman is here today, Judge. The rabbi is a
16 Chabad Rabbi in Brooklyn, in Coney Island, and he took the time
17 to summarize in a sentence for your Honor some of the many good
18 works that he has personally experienced, and none of those
19 have anything to do with all the people from Florida who are
20 here to speak to your Honor. Those people have to do with
21 smaller projects. He describes the family circle, and there's
22 a family circle that Lewis supports here and in the Habad down
23 in Florida, and what do they do? They have volunteers, both
24 high school students and nonstudents, meeting -- going and
25 meeting with people in senior citizen homes and in centers

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1 where there are autistic children, something he can relate to.
2 And one of the young women was given a homework assignment: If
3 you died tomorrow, would anybody miss you? And she wrote this
4 beautiful essay that I read years ago, but the essay basically
5 said: Yes, Madeline would miss me. She's an older woman in a
6 nursing home who had nobody who visited her except this young
7 student from high school, which was part of the family circle.

8 And the rabbi shared that letter with us, and it's a
9 beautiful letter, but those are the kinds of things that Lewis
10 has put himself into. He's visited these homes. The people
11 down there have described to us how he never left on Hanukkah
12 without leaving a menorah, he never left on Christmas without
13 leaving a Christmas tree, then he gave the kids bikes, and he
14 then left a gift card so they could buy themselves something.
15 These are small items, but they're small items that have a huge
16 impact. And, in my view, your Honor, they separate him and
17 distinguish him considerably from everybody who -- everybody
18 else who may go to jail.

19 This is not everybody else. This is a special human
20 being. And I stand here saying to your Honor, in as sincere
21 terms as I know, that this is a life worth saving. The
22 government says easily, oh, anybody could take care of Bernie.
23 Well, anybody can't take care of Bernie, and the person who's
24 always taken care of Bernie is his brother, Lewis.

25 In addition, your Honor, because of the death of his

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1 parents and also because there is really no need for an office
2 in New York, the whole family has been planning to bring Bernie
3 down to Florida, and changes for Bernie as an autistic
4 individual are very, very difficult, they have to be handled
5 delicately, and Lewis has taken the time to build an add-on to
6 his home with a separate entrance, so that Bernie has his own
7 apartment and can live independently -- there's a back door, I
8 understand, in case Bernie needs help -- but he's done that to
9 make sure that his brother is safe.

10 Up until recently, Sharon's husband was able to fill
11 the gap and be able to be there for Bernie, but he passed away
12 very suddenly, very recently, and so the family is in an
13 expedited mode to get Bernie down to Florida. They can't bring
14 Bernie to Florida if Lewis isn't going to be there. They can't
15 even explain to Bernie where Lewis would be.

16 These are not the kinds of things that -- it's easy to
17 stand up and say anybody can do it, but anybody can't do it.
18 Anybody can't run the business because he's the innovative side
19 of the business, not the mechanical side. He provides the
20 mechanics as well. If somebody can't figure out how to program
21 something, he can figure it out, and he can get them by. But
22 in the day-to-day working of the business, that's not what
23 they're worried about, they're worried about being able to keep
24 the business going because it moves so quickly in their
25 industry, and they can't protect legally anything that they

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1 come up with.

2 So his business can't survive, and the people who work
3 for him, the people who have -- he's supported all these years
4 emotionally, personally and, financially won't be able to count
5 on that support anymore. His family won't be able to count on
6 that support anymore. And his brother won't be able to count
7 on that support anymore.

8 And, yes, he thought -- he should have been thinking
9 about those things when he filed false tax returns or we
10 wouldn't be here. I understand that, Judge, and he understands
11 that. And he kicks himself about it 27 times a day. Everyone
12 in his family tells us that they have to beg him to stop
13 punishing himself. You couldn't punish him worse than the way
14 he's punished himself. That's a Jewish thing, I'm sure. But
15 at the end of the day, he is not like everybody else, and he
16 can't be compared to everybody else. And, really, people who
17 have figured out a sneaky way to hide the money offshore
18 shouldn't get amnesty, and people like him, because he didn't
19 think about hiding his money, shouldn't have to go to jail.
20 That makes no senses, and that's part of the government's
21 argument, and it makes no sense.

22 Judge, would you mind if I handed this letter up to
23 the Court?

24 THE COURT: No. Go ahead.

25 MS. KELLMAN: With a copy for the government.

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1 (Pause)

2 THE COURT: Thank you.

3 MS. KELLMAN: Your Honor, I didn't mean to be
4 presumptuous, but we have been trying to come up with a
5 suggestion that we thought was both meaningful and would
6 provide the kind of good that Lewis has done his whole life and
7 could make a real difference in this community, which really
8 needs to have somebody step in, and the State of Florida hasn't
9 been doing it, and it's something that with computers, he
10 thinks he will be able to move forward.

11 Your Honor, the message is always -- I think the
12 message is the same, that if you commit crimes, your liberty is
13 at risk, and Lewis has understood that from the first day he
14 got a phone call from the special agent. He understands that.
15 And he's carried himself the same way as he did back then, and
16 that was with a view towards resolving this problem. He knows
17 he made a mess of things, and he was prepared to throw himself
18 into the middle of it and make it right, and that's what we've
19 all endeavored to do for the last several years, and that was
20 before there was a prosecutor involved, before there was a
21 court involved, before there was a plea offer. He said, you're
22 right, I'm caught, and I'm going to fix this. Not I'm going to
23 run away, not I'm going to hide, but I'm going to fix it. And
24 he's worked very, very hard to fix it. He's worked very, very
25 hard to get the numbers together, to get the tax together.

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1 It's one of the reasons that we've worked so hard on this
2 research and development plan.

3 And I think in the beginning, when we first talked to
4 the government, they thought that it was absurd, frankly, and
5 they sort of laughed at us, but over the course of the last
6 year, we've educated them, I think, and provided them with a
7 tremendous amount of backup, and I think that in a civil
8 proceeding, we're hoping we'll succeed, but it wasn't to cheat.
9 I just want to be clear, that wasn't to cheat anybody.

10 I think that there are here, Judge, really irrevocable
11 consequences if Lewis were to go to jail. One other thing
12 about the work situation is each employee in the office, they
13 each have their own job, and they each know their own job, but
14 they don't know everybody else's job. There's only one person
15 there who knows everybody's job, and that is Lewis. So,
16 between having to be able to manage everybody else's
17 workstations in a way and also keep the business going forward,
18 because this field is moving so, so very quickly -- and not to
19 mention the fact that what he's done is really advance our
20 ability to get quality healthcare. And he's done that, in
21 large measure, with the help of his brother, who knows what the
22 needs in the community are, and Lewis has been able to
23 translate them into something that benefits all of us, frankly,
24 and addresses -- begins to address the addiction issue. It's
25 one thing where the federal government imposes a regulation and

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1 says all prescriptions have to be electronic, but all those
2 regulations were inconsistent or incompatible with state
3 systems, and it's Lewis who figured out how to make them
4 unified and bring that kind of protection. He's dealing with
5 health on a large-scale, Judge. And if your Honor is convinced
6 that some kind of term of punishment or confinement is
7 appropriate, I'd urge your Honor to consider a term of home
8 confinement, so that he can continue to work, continue to take
9 care of his family, continue to meet the needs of both his
10 employees and his family, and, in particular, his brother, and
11 still be able to do his community service and make a
12 difference, continue to do what he's always done, and that is
13 make a difference in the lives of the people he comes in
14 contact with.

15 The thing that jumped off the page to me, Judge, with
16 every letter was Lewis never wanted anything in return. He
17 just wanted to be able to help people. And he was so selfless
18 about it, and it's a word that everybody uses, and how many
19 people do we know who are like that? He's a special human
20 being, and he messed up. He messed up big time. But I'd be
21 proud to call him my friend, and I think that anybody who is
22 lucky enough to share his friendship and share his wisdom is
23 indeed a lucky person. And if these children at Dillard
24 Elementary School and High School are lucky enough to have him
25 involved in their lives, it can only accrue to their advantage

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1 and then, ultimately, to all our advantages.

2 So what do you tell the taxpayer, the population? You
3 say that when you make a difference in so many people's lives,
4 we can take that into account and not find that the ultimate
5 punishment has to be taking away your liberty, but maybe
6 putting you to work, so you can do something that helps the
7 community. I think there are so many ways that Lewis has
8 helped and can continue to help, and I just see incarceration
9 as something that just destabilizes everything that he's worked
10 to build not for himself, but for everybody else, everybody in
11 this room.

12 THE COURT: Thank you very much for that heartfelt
13 presentation.

14 MS. KELLMAN: Thank you.

15 THE COURT: Mr. Stahl, is there anything you'd like to
16 say today?

17 THE DEFENDANT: If I may?

18 THE COURT: Absolutely. Just speak into the
19 microphone, so I can hear you. Thank you.

20 THE DEFENDANT: Judge Abrams, thank you for the
21 opportunity to speak. I come before you today to accept full
22 responsibility for my conduct and to ask for your consideration
23 in my sentencing. Thank you for allowing me to say a few words
24 before you impose sentence.

25 By my conduct, I have failed myself, my family and

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1 friends, my community, and my country in a decision I made four
2 years ago, to file false tax returns and conceal the income
3 earned from the technology company that I built with my family
4 and my extended family, our employees.

5 I have humiliated myself and harmed all of my loving
6 family and team members. I have hurt everyone that means the
7 most to me, and I will never forget my crime, never forgive
8 myself, and I will never again commit any criminal act.

9 I took responsibility for my actions long before I was
10 charged, and I set to work immediately to set matters right. I
11 will always continue to be a valuable and contributing member
12 of society, because that's who I really am.

13 I have repaid all of the taxes owed from 2010 through
14 '14, and I am current in all my taxes, and will always be. My
15 commitment will never change.

16 Since those days, I have engaged a number of
17 accounting professionals who have made many changes to the
18 accounting and legal systems in my corporate and personal
19 systems to ensure that we will always be in compliance with the
20 law. Our accountants and lawyers have set up weekly, monthly,
21 quarterly, and annual reporting systems to ensure all taxes,
22 filings, and fees are paid correctly and in the proper time
23 frames, and those systems have been in place since early 2015.

24 Myself, my staff, and our lawyers and accountants are
25 ensuring the systems are and will continue to function properly

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1 within all legal and accounting guidelines and rules.

2 Throughout my life, I have always cared for my family
3 members and tried to contribute to our community, our society,
4 and our country.

5 My father, who suffered terribly in Nazi Austria,
6 taught our family to respect and support all of our fellow
7 human beings and to respect everyone's contribution to our
8 world as a whole.

9 Dad, I'm sorry. I've always tried to live by my dad's
10 wisdom, but the actions that I now stand in judgment for were
11 terrible -- were a terrible departure from the lessons you
12 taught all of us, and I am so sorry to have let you down.

13 Your Honor, I am remorseful and embarrassed, but I ask
14 to be allowed to continue contributing to our family and our
15 communities. I am truly a fortunate person, I live in a loving
16 and caring family, and our great country has allowed me to be
17 financially successful and to give back to our society. My
18 wife, Helene, and my sons, Evans and Jacob, are the most
19 supportive and caring family unit I could ever ask for, and my
20 twin brother, Jeffrey, and my sister, Sharon, have always been
21 there for me, and together, we have always been there for our
22 older brother, Bernie. I have failed them, but I will never
23 fail them again.

24 I live to give back to our family and society, and I
25 thrive in contributing and seeing our people thrive and achieve

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1 personal successes. My extended family and friends have shown
2 me love, caring, and support, and I thank you all for that.
3 And through the decisions I made that bring me humbly before
4 you today do not merit their support.

5 I have learned and changed from my past terrible
6 actions. My past actions will never recur, and I promise that
7 my current and future actions will make them proud and make me
8 proud to have their support and loyalty.

9 With humility, Lewis. Thank you very much.

10 THE COURT: Thank you very much.

11 Is there any reason sentence cannot be imposed at this
12 time?

13 MS. PAUL: No, your Honor.

14 MS. KELLMAN: No, your Honor.

15 THE COURT: I'm required to consider the advisory
16 guidelines range of 37 to 46 months in prison, as well as
17 various other factors that are set forth in the provision of
18 the law that I mentioned earlier, it's 18, United States Code,
19 Section 3553(a), and I have done so.

20 Those factors include, but are not limited to, the
21 nature and circumstances of the offense and the personal
22 history and characteristics of the defendant, because each
23 defendant must be considered individually as a person.

24 Judges are also required to consider the need for the
25 sentence imposed to reflect the seriousness of the offense,

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1 promote respect for the law, provide just punishment, afford
2 adequate deterrence to criminal conduct, protect the public
3 from future crimes of the defendant, and avoid unwarranted
4 sentencing disparities, among other things.

5 Sentencing is the hardest thing I do. It always is.
6 And this is an especially difficult sentencing for me, and I
7 think the reason is because I have before me someone who is a
8 good person, but was not a good citizen. There are a number of
9 things that are not disputed in this case. The first is the
10 conduct. From 2010 to 2014, Mr. Stahl's medical software
11 company earned over \$32 million, 21 million after business
12 expenses, for which he failed to pay taxes, and that resulted
13 in a loss to the Internal Revenue Service, and by extension the
14 American people, of between 6.3 and 8.7 million dollars.
15 That's a whole lot of money. Either way, however, the credit
16 for -- research and development credit, either way, that's
17 millions of dollars that could have been spent on roads, or
18 schools, or law enforcement salaries, but, instead, went to
19 pay, in part, for Mr. Stahl's country club benefits, and
20 jewelry, and firearms collection.

21 As I noted earlier, what's especially egregious here
22 is that Mr. Stahl didn't just engage in this conduct and do so
23 for years, but even after he was contacted by the IRS about his
24 failure to file the 1040 forms for all those years, he
25 continued his efforts to lie and cheat to keep that money for

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1 himself. He hired an accountant, but then lied to that
2 accountant, so that even when he filed delinquent returns in
3 May of 2015, they were not just late, but they were fraudulent.

4 He knew what he was doing. I don't believe this was a
5 momentary panic. This was conduct that lasted for years,
6 involved filing no returns, followed by filing fraudulent ones.
7 And there is a real need to promote respect for the law and to
8 deter others who might similarly be tempted to brazenly avoid
9 paying taxes by ensuring that they know that serious
10 consequences will follow if they do so.

11 There is also no dispute, however, that at the age of
12 62, Mr. Stahl has primarily lived a law-abiding, charitable
13 life, supporting not only his family members, but so many
14 individuals and organizations alike. And, as I said, I read
15 all of the letters people submitted, and I can see how much
16 love and support there is for you, Mr. Stahl, in this
17 courtroom, and I can see how genuine it is, including from your
18 lawyer. You've done a lot of good in your life, and I have to
19 consider that as well.

20 It's also true that Mr. Stahl's family and business
21 will suffer if he's incarcerated. Sadly, it's often the case
22 that a defendant's family is the one that suffers sometimes the
23 most as a result of criminal conduct. But, as I said earlier,
24 you must have known that when engaging in such conduct, that
25 there is a danger to his family and his business, and here, at

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1 least, Mr. Stahl's wife and sons are capable of assisting with
2 the business and keeping it afloat, even if they can't do
3 exactly what he did, and he has other family members to help
4 care for his older brother.

5 So I must, and will, consider all those factors and
6 the others raised, including the need to avoid unwarranted
7 sentencing disparities. I considered both the charts, the
8 arguments that you made. I also considered the page that I got
9 that I gave to you from the sentencing commission, which really
10 only has a very limited amount of information, so it's not that
11 helpful, but it indicates that 21 percent of the time, a
12 sentence was imposed within the guidelines range for this
13 particular level and this particular guideline provision,
14 2T1.1. So I have considered that, as well as the average and
15 median sentences in those cases.

16 Unlike so many of the people I sentence every day, who
17 come from, and have, almost nothing, you had so much, you have
18 so much still, as I look around this courtroom, Mr. Stahl, you
19 had so many privileges and benefits that so many people don't
20 have, and you, nonetheless, chose to steal millions of dollars
21 from the American people. And I don't doubt for a minute how
22 generous you are in your personal life, and that speaks very
23 well of you as a person, and it's also a welcome thing and a
24 responsible thing that you paid back all the money that you
25 owed, but, in my view, that alone can't be a sufficient

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1 punishment. That would send precisely the wrong message about
2 our criminal justice system. We simply can't have a system of
3 justice where the rich can get out of jail and avoid prison by
4 paying money that they have and the poor cannot.

5 The last thing I'll say is just about tax crimes:
6 They're not victimless crimes. At naturalization proceedings,
7 when I swear in new citizens, I talk about all the privileges
8 that they'll have as American citizens, but I also talk about
9 the obligations that come with those privileges, and I always
10 specifically mention you need to pay your taxes. Many of the
11 things that make this country the best country in the world --
12 safe streets, and good schools, and fair and efficient
13 courts -- cost money, and it is your obligation to contribute
14 as required by the law, and you failed to do so not because of
15 a mistake, or even out of need, but out of greed.

16 So I've considered all of that. I've considered who
17 you are as a person, and I've considered the conduct involved,
18 and all of the factors that I mentioned, and I am ready to
19 impose sentence. So I am going to ask you to stand, Mr. Stahl.

20 It's the judgment of this Court that you be committed
21 to the custody of the Bureau of Prisons for a term of 30
22 months, to be followed by a term of supervised release of three
23 years.

24 You can be seated, if you'd like, while I read the
25 terms of your supervised release.

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1 All the standard conditions of supervised release
2 shall apply. Unless anyone wants me to, I'm not going to read
3 them out loud. They're on page 20 and 21 of the presentence
4 report.

5 The mandatory conditions shall apply: You shall not
6 commit another federal, state, or local crime;

7 You must not unlawfully possess a controlled
8 substance;

9 I'm going to suspend the drug testing condition based
10 on the Court's determination that you pose a low risk of future
11 substance abuse;

12 You must make restitution in accordance with the law
13 and must cooperate in the collection of DNA.

14 I'm going to impose, in light of the nature of the
15 crime, the special conditions recommended by the probation
16 department: You must provide the probation officer with access
17 to any requested financial information and must not incur new
18 credit card charges or open additional lines of credit without
19 the approval of your probation officer unless you're in
20 compliance with the installment payment schedule.

21 And you will be supervised in the district of your
22 residence.

23 I'm imposing a fine of \$75,000, which is to be paid in
24 full no later than 60 days after the date of sentencing, as
25 well as a mandatory special assessment, or fee, of \$100. As we

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1 discussed, I understand the parties will submit a proposed
2 restitution order or other materials with respect to
3 restitution within 90 days.

4 Is the government also seeking forfeiture in this
5 case?

6 MS. PAUL: No, your Honor.

7 THE COURT: All right. So there will be no
8 forfeiture.

9 Before I read your appellate rights, I'd like to talk
10 about a surrender date.

11 Ms. Kellman, do you have any suggestions? It should
12 normally be around 60 days, but if there are any particular
13 obligations or things that he has in the near future, I'm happy
14 to discuss that.

15 MS. KELLMAN: Your Honor, would it be possible for us
16 to submit a letter to the Court both with a surrender date
17 recommendation and perhaps designation?

18 THE COURT: Okay. You can do that.

19 MS. KELLMAN: Can we do that by Friday?

20 THE COURT: Okay. Why don't you do that by Friday.
21 But, again, the surrender date should be approximately 60 days
22 out.

23 That's the sentence of this Court, Mr. Stahl.

24 You have a right to appeal your conviction and
25 sentence except to whatever extent you may have validly waived

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1 that right as part of your plea agreement. If you do choose to
2 appeal, the notice of appeal must be filed within 14 days of
3 the judgment of conviction. If you're not able to pay for the
4 costs of an appeal, you may apply for leave to appeal
5 in forma pauperis, which simply means the court costs, such as
6 filing fees, will be waived.

7 If you request, the Clerk of Court will prepare and
8 file a notice of appeal on your behalf.

9 I say this a lot at sentencing, and I firmly believe
10 it to be true: I don't think people need to be defined by the
11 worst mistake that they've ever made. I don't think you need
12 to be defined by this. You've done many admirable things in
13 your life, and you have a courtroom filled with people, and
14 many more outside, who love and support you. I considered what
15 your rabbi wrote, that you understand your decisions were not
16 in line with your core values, that you've expressed remorse,
17 but firm resolve to act differently in the future. I hope
18 that's true. I wish you luck with that. I know you have a
19 difficult time ahead, but I hope that afterwards, you're able
20 to move forward in a law-abiding and productive way. I wish
21 you luck with that.

22 Are there any other applications at this time?

23 MS. PAUL: Not from the government, your Honor.

24 MS. KELLMAN: No, your Honor.

25 THE COURT: Thank you. * * *

EXHIBIT 2

**Selected Sentencing Information for Offenders Sentenced Under §2T1.1
with a Base Offense Level of 24, 3-Level Decrease for Acceptance of Responsibility, Final Offense
Level of 21, and a Criminal History Category of I**

Fiscal Years 2013 - 2017¹

Total Number of Offenders		19
Type of Sentence Imposed	Number	Percent
Prison Only	17	89.5%
Probation and Confinement	2	10.5%
Sentence Relative to the Guideline Range	Number	Percent
Within Range	4	21.1%
Above Range	0	0.0%
§5K1.1 Substantial Assistance	6	31.6%
All Other Gov't Sponsored Below Range	2	10.5%
Non-Gov't Sponsored Below Range	7	36.8%
Sentence Length²	Average Months	Median Months
All Offenders	21	20
Within Range	38	37
Above Range	-	-
§5K1.1 Substantial Assistance	17	19
All Other Gov't Sponsored Below Range	19	19
Non-Gov't Sponsored Below Range	14	12
Supervised Release Imposed³	Number	Percent
Supervised Release	17	89.5%
No Supervised Release	2	10.5%
Term of Supervised Release⁴	Average Months	Median Months
All Offenders	25	24

¹ Only cases with complete guideline application information sentenced under USSG §2T1.1 using a *Guidelines Manual* in effect November 1, 2001 or later were included in this analysis. In addition, the analysis was limited to cases with a base offense level of 24, 3-level decrease for acceptance of responsibility, final offense level of 21, and a Criminal History Category of I. The tax loss table at §2T4.1 was amended effective November 1, 2015.

² Calculations of the average include sentences of probation as zero months and any term of confinement as described in USSG §5C1.1. Sentences, supervised release terms, and guideline ranges of life were included in the calculation as 470 months. The Commission does not report average sentence information for categories with fewer than three cases.

³ Only cases with complete supervised release information were included.

⁴ Cases with no term of supervised release imposed were excluded from the calculation of the average term of supervised release.

SOURCE: U.S. Sentencing Commission, 2013-2017 Datafiles, USSCFY13-USSCFY17.

EXHIBIT 3

Court Printout Data Analysis

2T1.1 Offenders, Base Offense Level 24-3 Levels = Level 21 Category 1

Years 2013 through 2017 = Nineteen (19) people in that class

Argument: The Non Government Sponsored Below Range Statistic of 36.8% is wrong.

Lewis is not in a class of government sponsored offenders or 5k1.1 offenders, and therefore, those statistics must be omitted from the chart to determine a realistic historically significant prison range average for offenders in Lewis' class.

Computation:

Total	19 people in combined class
Less:	<2> government sponsored, below range
Less:	<u><6></u> government sponsored 5k1.1 below range
Subtotal	<u>11</u> people in Lewis' class of offenders (e.g. non government sponsored)

Analysis:

Out of the 11 offenders left in Lewis' class, this was their sentences imposed:

7/11 were non-government sponsored below guidelines to an average of 14 months;

4/11 were non-government sponsored within guideline range to an average of 38 months.

Percentages:

7/11 = 64% of people in Lewis' class were sentenced to an average of 14 months; and

4/11 = 36% of people in Lewis' class were sentenced to an average of 38 months.